

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:24-cv-21843-KMM

SAMUEL LEE SMITH, JR.,

Plaintiff,

v.

JAVIER A. ENRIQUEZ,

Defendant.

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ORDER ON REPORT AND RECOMMENDATION

THIS CAUSE came before the Court upon Plaintiff's Complaint (ECF No. 1), Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 3), and Motion for Referral to Volunteer Attorney Program (ECF No. 4). The Court referred the matter to the Honorable Marty Fulgueira Elfenbein, United States Magistrate Judge, who issued a Report and Recommendation recommending that Plaintiff's Complaint be DISMISSED WITHOUT PREJUDICE and the Motions be DENIED AS MOOT. ("R&R") (ECF No. 7). Plaintiff did not file objections and the time to do so has passed. The matter is now ripe for review. As set forth below, the Court ADOPTS the R&R.

This action stems from Plaintiff's allegations that his Fourteenth Amendment right to due process was violated when Defendant Javier A. Enriquez did not grant him a hearing or temporary injunction. R&R at 2–3. For his perceived injuries, Plaintiff seeks "justice to BE SERVED" and monetary damages. *Id.* at 2.

The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). As set forth in the R&R, Magistrate Judge Elfenbein finds that Plaintiff fails to plausibly allege grounds on which the Court could grant relief. *See* R&R at 4 (noting that the factual allegations

consist of roughly four incomplete sentences containing no details on the circumstances giving rise to the Complaint). Magistrate Judge Elfenbein further finds that the doctrine of judicial immunity bars Plaintiff's sole claim for relief. *See id.* at 4–5 (explaining that Defendant appears to be a judge and is therefore entitled to absolute judicial immunity from damages for acts taken in his judicial capacity). Therefore, Magistrate Judge Elfenbein recommends that Plaintiff's Complaint should be dismissed and the Motion for Leave to Proceed *In Forma Pauperis* and Motion for Referral to Volunteer Attorney Program should be denied as moot. *Id.* at 6. This Court agrees.

Accordingly, UPON CONSIDERATION of the Motions, the R&R, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that:

1. Magistrate Judge Elfenbein's Report and Recommendation (ECF No. 7) is ADOPTED;
2. The Complaint (ECF No. 1) is DISMISSED WITHOUT PREJUDICE;
3. The Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 3) and Motion for Referral to Volunteer Attorney Program (ECF No. 4) are DENIED AS MOOT;
4. Plaintiff may amend the Complaint to address the aforementioned deficiencies by June 24, 2024;
5. The Clerk of Court is INSTRUCTED to CLOSE this case.

DONE AND ORDERED in Chambers at Miami, Florida, this 3rd day of June, 2024.



K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record